

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 14, 2008 Session

DISCOVER BANK v. SHIRLEY D. HENSON

Appeal from the Circuit Court for Davidson County
No. 05C3596 Amanda McClendon, Judge

No. M2007-02749-COA-R3-CV - Filed December 18, 2008

This is a collection action that was originated by a credit card company in general sessions court. Following an appeal to the circuit court, the defendant's Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim on which relief could be granted was granted because the plaintiff failed to attach to the pleadings the credit card agreement upon which the claim was based as required by Tenn. R. Civ. P. 10.03. We have determined the dismissal should be set aside because the action originated in general sessions court and as Tenn. Code Ann. § 16-15-729 provides, no civil case originating in a general sessions court shall be dismissed by a higher court for any informality, but shall be tried on its merits, and the court shall allow amendments in the form of action or the statement of the cause of action necessary to reach the merits. Further, civil cases originating in general sessions court that are appealed to circuit court may be pled on the facts alone without reference to specific causes of action. We, therefore, reverse the ruling of the circuit court and remand the case for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT, J., and WALTER J. KURTZ, SR. J., joined.

Steven T. Richardson, Clarksville, Tennessee, for the appellant, Discover Bank.

Larry L. Crain, Brentwood, Tennessee, for the appellee, Shirley D. Henson.

OPINION

Discover Bank filed a civil warrant in general sessions court against Shirley D. Henson ("Defendant") for "breach of contract on account number [xxx] in the amount of \$10,488.93 in principal charges + 722.60 interest at the rate of 19.800% as of November 11, 2004 + 3,496.27 attorneys fees, = \$14,707.80 + cost." An attached affidavit of Discover Bank's "Legal Placement Account Manager" referenced a "Statement of Account" and "Cardmember Agreement," however,

neither was attached. The general sessions court dismissed Discover Bank's civil warrant without prejudice, which Discover Bank timely appealed to the circuit court.

In circuit court, Discover Bank filed a Motion for Summary Judgment and a brief with attachments in support of the motion, including a copy of an unsigned document entitled "Cardmember Agreement" with "Discover Card" written at the top left side of the first page. Subsequently, Defendant filed a Motion to Strike Discover Bank's Motion for Summary Judgment for failure to provide adequate notice in accordance with local rules, which was not opposed by Discover Bank and was therefore granted by the circuit court.

When the case came on for trial in the circuit court, Defendant made a Motion in Limine requesting that Discover Bank be prevented from introducing any evidence of a cardmember agreement between the parties unless authenticated by someone with personal knowledge. The circuit court reserved judgment on the Motion in Limine. After counsel for both parties presented their opening statements, Defendant orally moved the court to dismiss Discover Bank's contract claim due to the fact Discover Bank had failed to comply with Tenn. R. Civ. P. 10.03, which requires a party to attach to the pleading, as an exhibit, any written instrument upon which a claim or defense is founded.¹ Immediately thereafter, Discover Bank orally moved to amend its pleadings (the civil warrant). The court denied Discover Bank's motion to amend its pleadings from the bench and it advised the parties that it would take Defendant's Motion to Dismiss under advisement and rule upon it at a later date.

One month later, the circuit court entered an Order granting Defendant's Motion to Dismiss finding that "Plaintiff's claim is indeed based on a written instrument, *i.e.*, a cardmember agreement, and that the Plaintiff has failed to amend or otherwise attach a copy of this cardmember agreement to its complaint or civil warrant."

ANALYSIS

It is most significant that this case originated in the general sessions court. This is significant because a plaintiff's pleading in general sessions court, in the form of a civil warrant, may be very informal, and the Tennessee General Assembly has mandated that:

¹Tenn. R. Civ. P. 10.03 states:

Whenever a claim or defense is founded upon a written instrument other than a policy of insurance, a copy of such instrument or the pertinent parts thereof shall be attached to the pleading as an exhibit unless the instrument is (1) a matter of public record in the county in which the action is commenced and its location in the record is set forth in the pleading; (2) in the possession of the adverse party and this fact is stated in the pleading; (3) inaccessible to the pleader or is of such nature that attaching the instrument would be unnecessary or impracticable and this fact is stated in the pleading, together with the reason therefor. Every exhibit so attached or referred to under (1) and (2) shall be a part of the pleading for all purposes.

No civil case, originating in a general sessions court and carried to a higher court, shall be dismissed by such court for any informality whatever, but shall be tried on its merits; and the court shall allow all amendments in the form of action, the parties thereto, or the statement of the cause of action, necessary to reach the merits, upon such terms as may be deemed just and proper. The trial shall be de novo, including damages.

Tenn. Code Ann. § 16-15-729.

When a general sessions case is appealed to the circuit court and no other pleadings are filed the circuit court judge essentially assumes “the same role as the magistrate in General Sessions Court except that a record [is] kept.” *Sheriff v. Preferred Alternative Tennessee, Inc.*, No. M2002-01282-COA-R3-CV, 2003 WL 21730762, at *2 (Tenn. Ct. App. July 25, 2003). Moreover, the circuit court “must regard cases appealed from general sessions courts with great indulgence and must not dismiss these cases because of informalities in the general sessions proceedings.” *Ware v. Meharry Medical College*, 898 S.W.2d 181, 184-85 (Tenn. 1995) (citing Tenn.Code Ann. § 16-15-729; *Spencer v. Dixie Fin. Co.*, 327 S.W.2d 301, 303 (Tenn. 1959)).

The law has long been that litigants in General Sessions Courts may plead their cases orally without filing written pleadings. *Spencer v. Dixie Fin. Co.*, 327 S.W.2d at 302-03; *Wilson v. White*, 102 S.W.2d 531, 534 (Tenn. Ct. App. 1936). Indeed, it may be argued that cases originating in general sessions court may be pled on the facts alone without reference to specific causes of actions. “And that which in a court of record may be done by proper pleading and proof may, as a general rule, be done before a justice of the peace by the *production of the proof alone*.” *Wood v. Hancock*, 23 Tenn. (4 Hum.) 465, 466-67 (1844) (emphasis added).

These ancient propositions of law have not been changed by modern rule. Even though the Tennessee Rules of Civil Procedure apply to General Sessions cases appealed to the Circuit Court, *see* Tenn. R. Civ. P. 1, the parties are not required to file formal pleadings. *Vinson v. Mills*, 530 S.W.2d 761, 765 (Tenn. 1975).

Sheriff, 2003 WL 21730762, at *2-3.

In the civil warrant filed by Discover Bank in general sessions court, Discover Bank asserted a claim for “breach of contract on account number [xxx] in the amount of \$10,488.93 in principal charges + 722.60 interest at the rate of 19.800% as of November 11, 2004 + 3,496.27 attorneys fees, = \$14,707.80 + cost.” The circuit court dismissed Discover Bank’s action on the ground that “Plaintiff has failed to amend or otherwise attach a copy of [the] cardmember agreement to its complaint or civil warrant,” as required by Tenn. R. Civ. P. 10.03. Although we wholeheartedly agree with the circuit court that Tenn. R. Civ. P. 10.03 precludes Discover Bank from recovering on the phantom written cardmember agreement Defendant allegedly signed, we respectfully disagree

with the circuit court's conclusion that all of Discover Bank's possible contract claims must be dismissed.

We reach this conclusion based upon the holding in *Sheriff* that cases originating in general sessions court that are appealed to circuit court "may be pled on the facts alone without reference to specific causes of action." *Sheriff*, 2003 WL 21730762, at *2. The civil warrant filed by Discover Bank in general sessions court, which asserts a claim for "breach of contract on account number [xxx] . . . ," does not require a written agreement signed by Defendant. As this court stated in *Sheriff*, Discover Bank's case, which originated in general sessions court, "may be pled on the facts alone without reference to specific causes of action." Therefore, Discover Bank has the right to pursue alternative claims, perhaps based on an oral agreement or an open account. However, without a written contract signed by Defendant, Discover Bank may not recover attorney's fees or a contract rate of interest. *See Holcomb v. Cagle*, No. E2007-01892-COA-R3-CV, 2008 WL 1788062, at *4 (Tenn. Ct. App. Apr. 21, 2008) (no Tenn. R. App. P. 11 application filed) (holding that the plaintiff may not recover attorney's fees or a contract rate of interest in the absence of a signed contract that expressly provides for such relief).

Discover Bank also contends the circuit court erred in denying its oral motion to amend its pleadings. Because we have remanded this matter for further proceedings, and realizing that one or both of the parties may desire to amend their pleadings or take discovery, we find this issue moot. On remand, if one or both of the parties seek to amend their pleadings in a timely manner, the circuit court should allow amendments in the form of action or the statement of the cause of action, necessary to reach the merits, upon such terms as the circuit court may be deemed appropriate. *See* Tenn. Code Ann. § 16-15-729.

IN CONCLUSION

The judgment of the trial court is reversed, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against Defendant, Shirley D. Henson.

FRANK G. CLEMENT, JR., JUDGE